

(27,599)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 298.

PHILADELPHIA AND READING RAILWAY COMPANY,
PETITIONER,

vs.

MARIE E. POLK.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF PENNSYLVANIA.

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C. P. No. 5, September Term, 1918.

No. 1919.

Docket Entries.

Michael D. Hayes, 8/27/19.

1919.

Geo. G. Parry.

MARIE E. POLK, Claimant.

vs.

PHILA. & READING RAILWAY CO., Deft., Philadelphia & Reading
Railway Co., Insurance Carrier.

Oct. 11, 1918. Appeal of Phila. & Reading Railway Co. from decision of the Workmen's Compensation Board made Oct. 4, 1918, filed.

Ex Die. Exceptions filed.

Oct. 11, 1918. Certiorari to Workmen's Compensation Board.

Jan. 4, 1919. Record returned, opened and filed.

Aug. 14, 1919. The appeal of the Defendant is dismissed and judgment is directed to be entered in accordance with the award of the Referee and the Workmen's Compensation Board.

Aug. 27, 1919. Certiorari from Supreme Court as of No. 135, Jan. Term, 1920, brought into office.

Certified from the record this 29th day of August, A. D. 1919.

[SEAL.]

R. M. SNYDER,

Pro Prothy.

3 In the Court of Common Pleas No. —, of Philadelphia
County, of September Term, 1918.

No. —.

Bureau of Workmen's Compensation

Department of Labor and Industry.

Claim Petition, No. 5722.

MARIE E. POLK, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant; Phila-
delphia and Reading Railway Company, Insurance Carrier.

Philadelphia and Reading Railway Company, Appellant, appeals
from the decision of the Workmen's Compensation Board made Oc-
tober, 4, 1918, on the claim above mentioned.

PHILADELPHIA AND READING
RAILWAY COMPANY,

By GEO. ZIEGLER,

Secretary.

COMMONWEALTH OF PENNSYLVANIA,

County of Philadelphia, ss:

George Ziegler on oath says that he is Secretary of Appellant
Company, and that this appeal is not taken for the purpose of delay,
but because the appellant believes that injustice has been done by
the decision appealed from.

GEO. ZIEGLER.

Sworn to and subscribed before me this 10th day of October A. D.
1918.

[SEAL.]

J. V. HARE,
Notary Public.

Commission expires March 1, 1919.

4 In the Court of Common Pleas No. —, of Philadelphia
County, of September Term, 1918.

No. —,

Bureau of Workmen's Compensation,

Claim Petition, No. 5722.

In the Matter of MARIE E. POLK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

*Exceptions Ex Parte Appellant to the Decision of the Workmen's
Compensation Board.*

1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915.

2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time decedent was injured.

3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof.

4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show that the decedent came within the provision of the Workmen's Compensation Act.

6. The Compensation Board erred in approving and adopting the findings and conclusions of the Referee.

7. The Compensation Board erred in allowing compensation to the claimant.

8. The claimant is not entitled to compensation.

5 9. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the "Federal Employers' Liability Act" and in violation of Article I, Section 8, of the Constitution of the United States.

10. The award of the Compensation Board is in violation of the 14th Amendment to the Constitution of the United States, in that it deprives this defendant of its property without due process of law.

11. The decision of the Compensation Board is not warranted by law under the evidence in this case.

GEORGE GOWEN PARRY,

*Attorney for Philadelphia and
Reading Railway Company, Appellant.*

Endorsement: No. 1919. C. P. No. 5, Sept. Term, 1918. Marie E. Polk vs. Philadelphia and Reading Railway Company. Defendant's Appeal and Exceptions Ex Parte Appellant to the Decision of the Workmen's Compensation Board. Filed Oct. 11, 1919. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

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C. P. No. —, September Term, 1918.

No. —,

MARIE E. POLK

VS.

PHILADELPHIA AND READING RAILWAY COMPANY.

To the Prothonotary:

Issue certiorari to the Workmen's Compensation Board in the above entitled case.

GEORGE GOWEN PARRY,

Attorney for Appellant.

October 9, 1918.

Endorsement: No. 1919. C. P. No. 5, Sept. Term, 1918. Marie E. Polk v. Philadelphia and Reading Railway Company. Procipe for Certiorari. Filed Oct. 11, 1918. George Gowen Parry, 415 Reading Terminal.

6

A-3929.

Docket Entries.

Proceedings under Claim Petition #5722.

George C. Klauder, Referee, First Compensation District.

MARIE E. POLK

VS.

PHILA. & READING RY. CO.

May 9, 1918.

Claim petition filed.

Counsel for claimant: Michael Hayes, Esq., Philadelphia, Pa.

- May 29, 1918. Notice to defendant of claim petition.
 May 29, 1918. Assignment of claim petition to Referee.
 June 6, 1918. Defendant's answer to claim petition filed.
 Counsel for defendant: George Gowen Parry,
 Esq., Philadelphia, Pa.
 Insurer of defendant: Self Insured.
 June 6, 1918. Notice of hearing with copy of answer served.
 June 11, 1918. Hearing before Referee at Philadelphia.
 July 15, 1918. Referee's award filed.
 Aug. 1, 1918. Appeal by defendant from Referee's findings of
 fact and conclusions of law.
 Aug. 2, 1918. Notice of appeal mailed to appellee.
 Sept. 12, 1918. Hearing before Board at Philadelphia. * * *
 oral argument and briefs submitted and re-
 ferred to Chairman Mackey for opinion.
 Oct. 3, 1918. Opinion by Chairman Mackey, Commissioners
 Scott and Leach concurring, affirming Referee's
 award and dismissing appeal filed.
 Oct. 4, 1918. Notice of decision of the Board with copies of
 same mailed to appellant and appellee.
 7
 Oct. 15, 1918. Appeal and exceptions from decision to the de-
 cision of the Workmen's Compensation Board
 received by Bureau.
 Oct. 15, 1918. Certiorari to Workmen's Compensation Board as
 of September Term 1918, \pm 1919, C. D. \pm 5,
 received.
 January 4, 1919. Certified copy of transcript of record, being pro-
 ceedings under Claim Petition \pm 5722 in the
 Bureau of the Workmen's Compensation Board
 of Pennsylvania, delivered to Prothy C. D. of
 Philadelphia County.

8 *Claim Petition for Compensation by Dependents of Deceased
 Employee.*

(Section 413.)

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim Petition No. 5722.

MARIE E. POLK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY CO., Defendant.

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To the Workmen's Compensation Board of Pennsylvania:

The claimant respectfully alleges the following facts:

(1) That John M. Polk died on Aug. 29, 1917, as the result of an accident occurring in the course of his employment.

(2) The dependents are as follows:

Name.	Residence.	Relation to deceased.
Marie E. Polk	3545 Janey St.	Widow.
John "	"	Son.
Chas. "	"	"
Geo. "	"	"
Arthur "	"	"

9

Year, month, day of birth.	Nationality.	Language spoken.
June 28, 1886	American	English.
Dec. 8, 1907	"	"
April 12, 1910	"	"
April 12, 1910	"	"
Nov. 29, 1915	"	"

(3) If a claimant is a widower, widow not living with the deceased employe at the date of death, father, mother, brother, sister, step or adopted child or a child to whom the deceased employe stood in loco parentis, state how and to what extent the deceased contributed to his or her support and if the claimant is a widower, also state how and why he is incapable of self support.

If the claimant is a widow or widower state also residence at date of employe's death. 3545 Janey St., Phila., Pa.

(4) There are the following surviving widow, widower or children who are not dependents. (State reason why not dependent.)

(5) By whom was the deceased employed at the time of the accident? Phila. and Reading Railway Co., 12th & Market Sts., Phila.

(6) Where did the accident happen? Clearfield St. Yard, Phila., Pa.

(7) When did the accident happen? August 28, 1917, 11.40 P. M.

(8) What kind of work was the deceased employe doing at the time of the accident? Coupling cars in yard.

(9) Give a full description of the accident and state how it caused the death of the deceased employe. Crushed between cars while coupling them in yard.

(10) Did the deceased employe receive medical, surgical, or hospital services? Episcopal Hospital, Front & Lehigh, Phila.

(11) What were the expenses of the last sickness and burial? \$250.

10 Has the employer paid any part of these, if so, how much?
No.

(12) What were the weekly wages of deceased at time of accident?
\$40.

What was the business of the employer? Railroad company.

What was the occupation of the deceased? Brakeman.

(1) If, but only if, the occupation was seasonal or dependent upon the weather, state:

(a) Total earnings of deceased during the last year \$—.

(13) Was compensation paid to the deceased employe between the date of accident and his death? No.

(14) Did you or the deceased employe serve notice of his injury upon his employer within fourteen days? Defendant employer had actual notice as soon as accident happened.

(15) What other facts are there which you believe important?

(16) State total amount of compensation claimed \$6,428.00.

Wherefore the (claimant, claimants) ask that your Honorable Board shall make an award that the defendant shall pay to (him, her, them) such compensation as may be due (him, her, them) under the alleged facts.

MARIE E. POLK,
Dependent, 3545 Janey St.

Subscribed and sworn to before me, this 25th day of May 1918
at Phila.

EVA VAN ARTSDALEN,
N. P.

My commission expires on 19th day of Feb., 1921.

NOTICE.—This petition may be signed and sworn to by any dependent for himself and all other dependents.

11 Pennsylvania Department of Labor and Industry.
Workmen's Compensation Bureau, Harrisburg, Pa.

Notice to Defendant of Claim Petition.

(Section 413.)

Claim Petition No. 5722.

MARIE E. POLK, Claimant,

VS.

PHILA. & READING RAILWAY, Defendant.

Harrisburg, Pa., May 29, 1918.

To Phila. and Reading Railway Co.,
c/o W. C. Brister, Philadelphia, Pa.:

A claim petition, a copy of which is enclosed herewith has been presented by Marie E. Polk against you to the Workmen's Compensation Board, and has been assigned to G. C. Klauder, Compensation Referee of the 1st District for investigation and determination in accordance with the provisions of the Workmen's Compensation Act of 1915.

We hereby notify you that unless an answer shall within seven days from the date of this notice be filed with the said Referee at his office 1103 North American Bldg. the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the claimant to prove, nor heard in your behalf to deny, such facts.

WORKMEN'S COMPEN-
SATION BUREAU.

Secretary.

NOTE.—The Defendant should file his answer in triplicate with the Referee.

12' *Defendant's Answer to Claim Petition.*

(Section 414.)

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim Petition No. 5722.

MARIE E. POLK, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

June 5, 1918.

In answer to the claim petition No. 5722.

1. The defendant denies the following facts alleged in the claim petition, to wit, the averments of paragraphs 1, 2, 8, 9, 11 and 12.

2. The defendant states the following additional facts not alleged in the claim petition.

3. The defendant denies that he is liable to pay compensation under the facts alleged in the claim petition, for the following reasons, Because claimant's decedent and defendant were engaged in interstate commerce at the time the former was injured.

PHILADELPHIA AND READING
RAILWAY COMPANY,*Defendant,*

By F. W. FLECK,

Chief Clerk Claim Dept.

Address, Reading Terminal, Phila., Pa.

Subscribed and sworn to before me this 5th day of June, 1918.

J. V. HARE,

Notary Public.

[SEAL.]

My commission expires on the 1st day of March, 1919.

- 13 Pennsylvania Department of Labor and Industry,
 Workmen's Compensation Bureau, Harrisburg, Pa.
 Assignment of Claim Petition to Referee.

(Section 413.)

Claim Petition No. 5722.

MARIE E. POLK, Claimant, 3545 Janney St., Phila.,

—

PHILA. & READING RY., Defendant, Care of W. C. Brister, Phila.
 Harrisburg, Pa., May 29, 1918.

To G. C. Klauder, Referee 1st District.

Enclosed find copy of Claim Petition No. 5722 filed by ——— of ——— vs. ———, of ———, which is assigned to you for investigation and determination in accordance with the provisions of the Workmen's Compensation Act of 1915.

WORKMEN'S COMPEN-
 SATION BUREAU,

Secretary.

Copy of claim pet. served on def. for this date.

- 14 The foregoing record of the proceedings of the above case
 is hereby approved and certified as correct.

GEORGE C. KLAUDER,
 Referee, First District.

Phila., Penna., July 15, 1918.

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V. Award of the Referee.

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Referee's Award or Disallowance of Compensation.

Claim Petition No. 5722.

MARIE E. POLK, Claimant,

vs.

PHILADA. & READING RY. Co., Defendant.

Hearing held at #1115 North American Building, Philada., Penna., on Tuesday, June 11th, 1918, at 10 A. M., at which there were present:

Mrs. Mary E. Polk, 3545 Janney Street, Philada., Penna., Claimant; Michael Hayes, Esq., Penn Square Bldg., Philada., Penna., Counsel for Claimant; and

George Gowen Parry, Esq., 133 South 12th Street, Philada., Penna., Counsel for Defendant; and George S. Whertley, 3240 West Huntingdon Street, Philada., Penna., Witness for Defendant.

Findings of Fact.

At the hearing the Claimant and Defendant agreed on the following facts:

First. On August 28th, 1917, neither John M. Polk nor the Defendant had filed with the Workmen's Compensation Bureau, nor served upon the other, notice of rejection of Article III of the Workmen's Compensation Act of 1915, in accordance with the provisions of said Act.

Second. On that date and for some time previous thereto, John M. Polk was in the employ of the Defendant, whose business was that of steam railway operator and whose place of business was at Philadelphia, Penna., as a brakeman;

Third. In said employment on that date his wages were payable on an hourly basis and during so much of the six months previous thereto as he worked for the Defendant his average weekly wage, exclusive of overtime, was Nineteen Dollars and Eighty Cents (\$19.80) and was payable semi-monthly;

Fourth. On that date John M. Polk while employed as a brakeman, on a freight train in the Port Richmond yard of the Defendant in Philada., Penna., handled by engine #832, was caught between two cars, and as a result thereof sustained certain injuries;

Fifth. The Defendant had immediate knowledge of the occurrence of said injuries.

Sixth. The Defendant furnished to John M. Polk proper and reasonable medical, surgical and hospital services, medicines and supplies, having him sent to the Episcopal Hospital, Philada.

Seventh. John M. Polk died August 29th, 1917, as a result of the injury so sustained, and the Defendant had due knowledge of the death of John M. Polk, and that it resulted from the injuries aforesaid.

Eighth. At the time of the occurrence of the injury the Defendant was a common carrier, by rail, engaged in both interstate and intrastate commerce.

17 The Referee finds the following additional facts:

First. The expense of the last sickness and burial of John M. Polk exceeded One Hundred Dollars (\$100.00) none of which has been paid by the Defendant:

Second. John M. Polk left to survive him the following dependents:

His widow—Marie E. Polk—who resided with him at the date of his death, and the following children—

John Polk, born December 8th, 1907.

Charles Polk, born April 12th, 1910.

George Polk, born April 12th, 1910.

Arthur Polk, born November 29th, 1915.

Third. At the time of the occurrence of the injury there was a draft of freight cars attached to the engine which was in charge of the crew of which John M. Polk was a member. Some of these cars were cars bound from points within the State of Pennsylvania to other points within the State of Pennsylvania, and the others were cars loaded with various commodities, some of which were bound from points outside the State of Pennsylvania to points within the State of Pennsylvania, and others, of which were bound from points within the State of Pennsylvania to points outside of the State of Pennsylvania, and there was at least one car of this draft of freight cars which was passing through Pennsylvania, from a point in New York to a point in Illinois.

It was contended by the Defendant that under these facts John M. Polk was at the time of the occurrence of the injury, engaged in performing duties incident to interstate commerce, and that, therefore, the Claimant was not entitled to compensation. It has been repeatedly held by the Workmen's Compensation Board, and by the Courts, that the burden of establishing the fact that an employe was at the time of the occurrence of the injury engaged in performing the duties incident to interstate commerce, is upon the

18 Defendant, who alleges this fact. In the present case we are of the opinion that the Defendant has failed to meet this

burden of proof. The Defendant contended that having shown that the work of the decedent as a member of this crew was work incident to interstate commerce, they have established the fact that the decedent was at the time of the occurrence of the injury actually engaged in performing such duties, and that therefore the Defendant had met the burden required of it. The Defendant offered no testimony whatever to show what work John M. Polk was performing at the time that he was injured; the Defendant simply showed that the draft of cars constituting the train, under the control of the crew of which John M. Polk was a member, contained cars en route in the course of interstate journeys, but we feel that it might well be that while this train was standing on the tracks in the yard awaiting further orders to proceed, or even for some other reason that the conductor of the crew or some other superior of Polk's might have delegated him to perform some duties for the Defendant which were not incident to nor necessary for the continuance of the interstate journey of the cars in this draft. The engine and crew were a yard engine and crew. The testimony shows that this crew had no duties to perform outside of the yard limits. We feel that, particularly with a crew of this sort, there may have been many things which this brakeman might have been delegated to perform while he was still a member of this crew and had in charge the cars shown by the Defendant to have been in this draft, entirely separate and apart from the movement of these cars, and of course in that case he would not have been at the time of the occurrence of the injury actually engaged in performing the duties incident to interstate commerce.

The Defendant further contended that since at the time of the occurrence of the injury the employe was a member of a crew having in charge interstate cars, necessarily he must have been performing some duty incident to these cars or else he would have been acting outside the course of his employment. In this we cannot agree. We feel that it is the duty of the Defendant to show just what the employe was doing at the time of the occurrence of the injury and thus establish by the weight of the evidence the fact that at the time of the occurrence of the injury the employe was actually engaged in work incident to interstate commerce; otherwise, the Referee could but guess as to what the employe was doing, and this, of course, he is not permitted to do. We are, therefore, of the opinion that the Defendant has not met the burden of proving that at the time of the occurrence of the injury John M. Polk was actually engaged in duties incident to interstate commerce.

Conclusions of Law.

On August 28th, 1917, both John M. Polk and the Defendant were bound by the terms of Article III of the Workmen's Compensation Act of 1915.

The injury sustained by John M. Polk on that date while acting in the course of his employment with the Defendant was such an

injury by accident as is contemplated by Article III, Section 301, of said Act; and since the Defendant had immediate knowledge of the occurrence of the injury; and since the death of John M. Polk resulted from said injuries, and the Defendant had due notice of his death and that it had so resulted; and since John M. Polk left to survive him a dependent widow and children; and since the Defendant has failed to meet the burden of proving that at the time of the occurrence of the accident John M. Polk was actually engaged in performing duties incident to interstate commerce,—the Claimants are entitled to compensation.

Award.

Under Article III, Section 307, compensation is awarded as follows:

To Marie E. Polk, One Hundred Dollars (\$100.00) on account of the expense of the last sickness and burial of John M. Polk and

20 Sixty Percent (60%) of the decedent's weekly wage of Nineteen Dollars and Eighty Cents (\$19.80) or Eleven Dollars and Eighty-eight Cents (\$11.88) per week, from August 29th, 1917, to May 29th, 1923; inclusive.

To the Guardian of John Polk, Charles Polk, George Polk and Arthur Polk, Forty-five Percent (45%) of decedent's weekly wage of Nineteen Dollars and Eighty Cents or Eight Dollars and Ninety-one Cents (\$8.91) per week, from May 30th, 1923, to December 7th, 1923, inclusive;

To the guardian of Charles Polk, George Polk and Arthur Polk, Thirty-five Percent (35%) of decedent's weekly wage of Nineteen Dollars and Eighty Cents (\$19.80) or Six Dollars and Ninety-three Cents (\$6.93) per week, from December 8th, 1923, to April 11th, 1926, inclusive;

To the Guardian of Arthur Polk, Fifteen Percent (15%) of decedent's weekly wage of Nineteen Dollars and Eighty Cents (\$19.80) or Two Dollars and Ninety-seven Cents (\$2.97) per week, from April 12th, 1926, to November 28th, 1931, inclusive.

(Signed)

GEO. C. KLAUDER,

Referee, First District,

Philada., Penna., July 15, 1918.

21 Pennsylvania Department of Labor and Industry.

Workman's Compensation Bureau,

Harrisburg, Pa.

Received Aug. 1, 1918. Workmen's Compensation Board.

Appeal from Referee's Findings of Fact.

(Section 419.)

July 31, 1918.

Claim Petition, No. 5722.

MARIE E. POLK, Claimant,

VS.

PHILADELPHIA & READING RAILWAY COMPANY, Defendant.

To the Workmen's Compensation Board, Harrisburg, Pa.:

Defendant hereby appeals from the award of George C. Klauder, Esq., Referee of the First Compensation District, on the ground that the hereinafter specifically alleged findings of fact on which it is based are not supported by the evidence hereinafter set forth.

1. (Specify what particular findings of fact you allege are not supported by the evidence.) 3rd additional findings of fact in so far as it relates to defendant's failure to meet the burden of proof.

2. (Specify the evidence which you allege does not support the above findings of fact.) Testimony of George S. Whertley, testimony page 9, and agreed facts, testimony page 2 and award page 1.

PHILADELPHIA AND READING
RAILWAY COMPANY.

By GEORGE GOWEN PARRY,

(Name of Party Taking Appeal).

Its Attorney.

Address: George Gowen Parry, Attorney at Law, 609 Franklin Bldg., Phila.

Subscribed and sworn to before me this —, —, —.

My commission expires on the — day of —, 191—.

NOTICE.—This appeal must be filed within 10 days after the service of the notice of the referee's award or disallowance of compensation.

22 Pennsylvania Department of Labor and Industry,
 Workmen's Compensation Bureau,
 Harrisburg, Pa.

Received Aug. 1, 1918. Workmen's Compensation Board Referred
to —.

Appeal from Referee Alleging Error of Law.

(Section 419.)

July 31, 1918.

Claim Petition, No. —.

MARIE E. POLK, Claimant,

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

To the Workmen's Compensation Board, Harrisburg, Pa.:

Defendant -by appeals from the award of George C. Klauder, Esq., Referee of the First Compensation District on the ground that upon the facts found by the said referee his award is not in accordance with the provisions of the Workmen's Compensation Act of 1915 in the following particulars:

1. The Referee erred in failing to reach the legal conclusion that the decedent and the defendant were engaged in inter-state commerce at the time the former was injured.

2. The Referee erred in reaching the legal conclusion that the claimant is entitled to compensation under the Workmen's Compensation Act of Pennsylvania.

3. The Referee erred in calculating the amount of the award.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By GEORGE GOWEN PARRY,
(Name of Party Taking Appeal),
Its Attorney.

George Gowen Parry, Attorney at Law, 609 Franklin Bldg., Philadelphia.

NOTICE.—This appeal must be filed within 10 days after service of the notice of the Referee's award or disallowance of compensation.

23 Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau.

Harrisburg, Pa.

Notice of Appeal from Referee.

(Secs. 419-420-421.)

Harrisburg, Pa., August 2, 1918.

Claim Petition, No. 5722.

Compensation Agreement No. —.

Appeal No. 929.

MARIE E. POLK, Claimant,

VS.

PHILADELPHIA & READING RY. Co., Defendant.

To Michael Hayes, Esq., Penn Square Bldg., Philadelphia, Pa.:

The Workmen's Compensation Board notifies you that the defendant has taken appeal from the award of compensation by Referee Klauder in the above case, copy of which is enclosed herewith. (See note at bottom of page.)

You should advise promptly whether you desire the appeal to be heard.

- (a) Without argument on your part.
- (b) On brief to be submitted.
- (c) On oral argument in person or by counsel.

If request to submit argument or brief is not made by either party the appeal will be considered by the Board at its first meeting after receipt of transcript of testimony from the Referee.

WORKMEN'S COMPENSATION BOARD.

_____,
Secretary.

NOTE.—When appeal is filed in duplicate, copy of same will be furnished with this notice. Otherwise, if copy is desired it should be obtained from the appellant.

G.
Enc.

3—844

24 Pennsylvania Department of Labor and Industry,
 Workmen's Compensation Board.

Notice of Hearing of Appeal.

Harrisburg, Pa., Sept. 8, 1919.

47000 Position No. _____

May 4, 1918.

Cooperation Agreement No. —

Appeal No. 1920

MAGNETIC FIELD EFFECTS ON CRYSTALLINITY

90

POOLE & BURNES, INC., Defendant.

To Michael Hayes, Esq.,
Penn Square Bldg., Phila.

Notice is hereby given that the Workmen's Compensation Board will hear argument on appeal from decision of Referee in above case at Philadelphia, 11th Floor N. American Building, at 2.00 P. M., Wednesday, September 11, 1918.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD

Sierra Nevada

Original copy of this notice served by mail as per date and address
hereon.

LEE SOLOMON.

Secretary

Fig. 11.

25 Pennsylvania Department of Labor and Industry.

Workmen's Compensation Board.

Notice of Hearing of Appeal.

Harrisburg, Pa., Sept. 4, 1918.

Claim Petition, No. 5722.

Compensation Agreement No. —.

Appeal No. A-929.

MARIE E. POLK, Claimant,

vs.

PHILADELPHIA & READING RY. CO., Defendant.

To George Gordon Perry, Esq.,

609 Franklin Bldg., Phila.

Notice is hereby given that *that* the Workmen's Compensation Board will hear argument on appeal from decision of Referee in above case at Philadelphia, 11th Floor N. American Building, at 2:00 P. M., Wednesday, September 11, 1918.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD.

Secretary.

Original copy of this notice served by mail as per date and address herein.

LEE SOLOMON,

Secretary.

Per H.

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A. 929.

Department of Labor and Industry.
Workmen's Compensation Board.
Harrisburg, Pa.

Appeal from Award of Compensation by Referee Klauder, District
No. 1.

Claim Petition, No. 5722.

MARIE E. POLK, Claimant, 3545 Janney Street, Philadelphia, Pa.
v.

PHILA. & READING RAILWAY CO., Philadelphia, Pa., Defendant.

Appellant's Counsel: George Gowan Parry, Esq., 609 Franklin
Building, Philadelphia, Pa.

Appellee's Counsel: Michael Hayes, Esq., Penn Square Building,
Philadelphia, Pa.

Opinion.

MACKEY, *Chairman*:

The findings of fact and conclusions of law of the Referee are
adopted by the Board and the award is affirmed.

HARRY A. MACKEY,
Chairman.

Concurred in by Commissioners Scott and Leech.

Oct. 3, 1918.

27 In the Court of Common Pleas No. —, of Philadelphia
County, of September Term, 1918.

No. —.

Received Oct, 15, 1918. Workmen's Compensation Board
Referred to —.

Department of Labor and Industry.

Claim Petition, No. 3722.

MARIE E. POLK, Claimant.

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant;

Philadelphia and Reading Railway Company, Insurance Carrier.

Philadelphia and Reading Railway Company, Appellant, appeals
from the decision of the Workmen's Compensation Board made Oc-
tober 4, 1918, on the claim above mentioned.

PHILADELPHIA AND READING
RAILWAY COMPANY,
By GEO. ZIEGLER,

Secretary.

COMMONWEALTH OF PENNSYLVANIA.

County of Philadelphia, ss:

George Ziegler on oath says that he is Secretary of Appellant
Company, and that this appeal is not taken for the purpose of delay,
but because the appellant believes that injustice has been done by
the decision appealed from.

GEO. ZIEGLER.

Sworn to and subscribed before me this 10th day of October A. D.
1918.

[SEAL.]

J. V. HARE,
Notary Public.

Commission expires March 1, 1919.

28 In the Court of Common Pleas No. —, of Philadelphia County,
of September Term, 1918.

No. —.

Bureau of Workmen's Compensation.

Claim Petition, No. 5722.

In the Matter of MARIE E. POLK, Claimant,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

VII. Exceptions Ex Parte Appellant to the Decision of the Workmen's Compensation Board.

1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915.

2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time decedent was injured.

3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof.

4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show that the decedent came within the provisions of the Workmen's Compensation Act.

6. The Compensation Board erred in approving and adopting the findings and conclusions of the Referee.

7. The Compensation Board erred in allowing compensation to the claimant.

8. The claimant is not entitled to compensation.

9. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the "Federal Employers' Liability Act" and in violation of Article I, Section 8, of the Constitution of the United States.

29 10. The award of the Compensation Board in violation of the 14th Amendment to the Constitution of the United States, in that it deprives this defendant of its property without due process of law.

11. The decision of the Compensation Board is not warranted by law under the evidence in this case.

GEORGE GOWEN PARRY,
*Attorney for Philadelphia and Reading
Railway Company, Appellant.*

Certified from the Record this 14th day of October A. D. 1918.
[SEAL.] R. W. SNYDER,
Prothonotary.

Endorsement: No. 1919. C. P. No. 5, Sept. Term, 1918. Marie E. Polk vs. Philadelphia and Reading Railway Company. Copy. Defendant's Appeal and exceptions ex parte Appellant to the Decision of the Workmen's Compensation Board. Pd. Filed Oct. 11, 1918. Rains, Prothonotary. George Gowen Parry, Attorney at Law, 415 Reading Rerminal.

30 *Certiorari Workmen's Compensation Board.*

Form 136.

CITY AND COUNTY OF PHILADELPHIA, ss:

The Commonwealth of Pennsylvania to the Workmen's Compensation Board, Greeting:

We, being willing, for certain causes, to be certified of a certain action, between Marie E. Polk, Claimant, and Philadelphia and Reading Railway Company, Defendant and Insurance Carrier, before you depending, do command you, within ten days after service hereof to certify to our Court of Common Pleas, No. —, at Philadelphia, the entire Record as before you they now remain, together with this writ; that we may further cause to be done thereupon, that which of right and according to the Laws and Constitution of this Commonwealth ought to be done.

Witness the Honorable J. Willis Martin, President Judge of our said Court at Philadelphia, the 11th day of Oct., in the year of our Lord, one thousand nine hundred eighteen (1918).

HENRY F. WALTON,
Prothonotary.

By SOLOMON RAINS.

Received Oct. 15. Workmen's Compensation. Referred to —.

Endorsement: 191, Sep. Term, 1918. Court of Common Pleas No. 5, County of Philadelphia. Marie E. Polk vs. Philadelphia and Reading Railway Co. Certiorari to Workmen's Compensation Board. Parry.

31 I hereby certify that the foregoing is a true and complete transcript of record in the case of Marie E. Polk v. Philadelphia & Reading Railway Company, being proceedings under Claim

Petition #5722, in the Bureau of the Workmen's Compensation Board of Pennsylvania.

HARRY A. MACKEY,
Chairman.

Attest:

LEE SOLOMON,
Secretary to Board.

Endorsement: 1919, Sept. Ty. 1918. Court of Common Pleas No. 5 of Philadelphia County. Marie E. Polk v. Philadelphia & Reading Rwy. Co. Certified Copy of Transcript of Record, being proceedings under claim petition #5722 in the Bureau of the Workmen's Compensation Board of Pennsylvania. Filed Jan. 4, 1919. Hanna, Pro Prothy.

32 Workmen's Compensation Board.
Department of Labor and Industry,
Harrisburg.

Masonic Temple.

Hon. Henry F. Walton,
Proth'y, Common Pleas,
City Hall,
Phila.

Returned opened and filed Jan. 4, 1919. Hanna, Pro Proth'y

[Department of Labor and Industry,]*
[Masonic Temple,]*
[Harrisburg.]*

[Workmen's Compensation Bureau.]*

On margin: C P 5 S 18. #1919.

33 Common Pleas No. 5, Sept. Term, 1918.

No. 1919.

MARIE E. POLK

vs.

PHILADELPHIA & READING RAILWAY COMPANY; Philadelphia &
Reading Railway Company, Ins. Carrier.

SIR:

Enter *my* appearance for plaintiff in above case.

MICHAEL L. HAYES,
FRANCIS M. Mc ADAMS,
Attorneys for Plaintiffs.

To Prothon-tary C. P., Philadelphia, Pa.

[*Words enclosed in brackets erased in copy.]

Endorsement: No. 1919. September Term, 1918, C. P. No. 5. Marie E. Polk vs. Philadelphia & Reading Railway Company, Philadelphia & Reading Railway Company, Ins. Carrier. Appearance for Plaintiff. Filed Aug. 27, 1919. Michael D. Hayes, Pro Proth'y.

34 THE SUPREME COURT OF PENNSYLVANIA,
Eastern District, City and County of Philadelphia, ss:

The Commonwealth of Pennsylvania to the Judges of the Court of Common Pleas, No. 5, for the County of Philadelphia, Greeting:

We being willing for certain causes, to be certified of the matter of the appeal of Philadelphia and Reading Railway Company from the judgment of your said Court at No. 1919 of September Term, A. D. 1918, wherein Marie E. Polk was Plaintiff and the said appellant was Defendant, before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, at a Supreme Court to be holden at Philadelphia, in and for the Eastern District, the first Monday of January next (1920) so full and entire as in your Court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness, the Honorable J. Hay Brown, Doctor of Laws, Chief Justice of our said Supreme Court at Philadelphia, the twenty-seventh day of August in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.]

WILLIAM A. STONE,
Prothonotary.

To the Honorable the Justices of the Supreme Court of the Commonwealth of Pennsylvania, sitting in and for the Eastern District:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

JOHN MONOGHAN. [SEAL.]
———. [SEAL.]

[Endorsed:] No. 1919 September Term, 1918, C. P. No. 5, Phila. No. 135, January Term, 1920, Supreme Court. Marie E. Polk v. Philadelphia and Reading Railway Company, Appellant. Certiorari to the Court of Common Pleas No. 5, for the County of Philadelphia. Returnable the first Monday of January, 1920. Rule on the Appellee, to appear and plead on the Return-day of the Writ. William A. Stone, Prothonotary. Aug. 27, 1919. Brought into office. M. Hanna, Dep. Prothy. Filed in Supreme Court Sep. 5, 1919, Philadelphia. George Gowen Parry.

35 In the Supreme Court of Pennsylvania for the Eastern District, Court of Common Pleas, No. 5, of the County of Philadelphia, September Term, 1918.

No. 1919.

MARIE E. POLK

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Enter appeal on behalf of Philadelphia and Reading Railway Company from the judgment of the Court of Common Pleas No. 5 of the County of Philadelphia.

GEORGE GOWEN PARRY,

Attorney for Appellant.

William A. Stone, Prothonotary.

SUPREME COURT, EASTERN DISTRICT,
County of Philadelphia, ss:

George Ziegler, Secretary of Philadelphia and Reading Railway Co., being duly sworn saith that said appeal is not taken for the purpose of delay, but because Appellant believes it has suffered injustice by the judgment from which it appeals.

GEO. ZIEGLER,
C. H.

Sworn to and subscribed, this 27th day of Aug. A. D. 1919.

[SEAL.]

J. V. HARE,
Notary Public.

Commission expires March 1, 1923.

[Endorsed:] No. 135, January Term, 1920, Supreme Court of Pennsylvania, Eastern District. Marie E. Polk vs. Philadelphia and Reading Railway Company. Appeal and Affidavit. Filed in Supreme Court Aug. 27, 1919, Philadelphia. George Gowen Parry, Attorney for Appellant, 415 Reading Terminal, Phila., Pa.

36 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 135.

MARIE E. POLK

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

Assignments of Error.

Philadelphia and Reading Railway Company, the appellant above named, makes and files the following Assignments of Error in the above entitled case.

1. The Court below erred in dismissing defendant's first exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

1. The Compensation Board erred in reaching the legal conclusion that the claimant was entitled to compensation under the Workmen's Compensation Act of 1915.

2. The Court below erred in dismissing defendant's second exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time decedent was injured.

3. The Court below erred in dismissing defendant's third exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

3. The Compensation Board erred in holding that the defense of interstate commerce carries with it the burden of proof.

4. The Court below erred in dismissing defendant's fourth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

37 4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Court below erred in dismissing defendant's fifth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show that the decedent came within the provisions of the Workmen's Compensation Act.

6. The Court below erred in dismissing defendant's ninth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

9. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplement thereto, known as the "Federal Employers' Liability Act" and in violation of Article I, Section 8, of the Constitution of the United States.

7. The Court below erred in dismissing defendant's tenth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

10. The award of the Compensation Board is in violation of the 14th Amendment to the Constitution of the United States in that it deprives this defendant of its property without due process of law.

GEORGE GOWEN PARRY,

GEORGE GOWEN PARRY,

Attorney for Appellant.

38 [Endorsed:] 135. In the Supreme Court of Pa., Eastern District. Marie E. Polk vs. Philadelphia and Reading Railway Company, Appellant. Assignments of Error. Filed in Supreme Court Jan. 5, 1920, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

39 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1920.

No. 135.

MARIE E. POLK

v.

PHILADELPHIA & READING RAILWAY COMPANY, Appellant.

Appeal from C. P. No. 5, Philadelphia.

Filed February 2, 1920.

Per Curiam:

The defense set up by the appellant to the claim made by the appellee for compensation for the death of her husband is that at the time he received his injuries he was a brakeman in its employ in connection with its interstate commerce business. The referee found that he was an employee of the appellant on a freight train, in the Port Richmond yard, in Philadelphia, at the time of his injuries, which resulted in his death on August 29, 1917. There was no presumption as to the character of his employment. If it was in connection with interstate commerce, as is alleged by appellant, the

burden was upon the latter to show that fact: *Hench v. Pennsylvania Railroad Company*, 246 Pa. 1; *Murray v. Pittsburgh, C., C. & St. L. Railroad Company*, 263 Pa. 398. The referee found as a fact that the appellant had failed to meet the burden of proof which rested upon it. His distinct finding was "the defendant offered no testimony whatever to show what work John M. Polk was performing at the time he was injured."

Appeal dismissed and award affirmed.

40 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 135.

MARIE E. POLK

VS.

PHILADELPHIA & READING RAILWAY COMPANY, Appellant.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the Other Justices of the Said Honorable Court, and to the Honorable Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company, appellant herein, respectfully represents:

That the above entitled case was an appeal by the defendant from the judgment of the Court of Common Pleas No. 5 of Philadelphia County dismissing an appeal from the decision of the Workmen's Compensation Board affirming an award of the Referee of the First Compensation District.

Your petitioner attaches hereto a copy of the opinion of this Honorable Court, together with a copy of the paper book of the appellant containing its brief and appendix and a copy of the paper book of the appellee.

That the opinion of this Honorable Court, filed February 2, 1920, indicates that its decision in affirming the judgment of the Court of Common Pleas is based on the following finding of the Referee:

"The defendant offered no testimony whatever to show what work John M. Polk was performing at the time he was injured."

This is quite true, but the reason the defendant offered no testimony on the point was because at the hearing before the Referee the claimant and the defendant stipulated upon the record that Polk was working as a brakeman on the train handled by, and attached to, engine No. 832 at the time he was killed, and the Referee so

found in his Fourth finding and Third additional finding.

41 The said findings were as follows:

"Fourth.—On that date John M. Polk while employed as a brakeman, on a freight train in the Port Richmond yard of the Defendant in Philada., Penna., handled by engine #832, was caught between two cars, and as a result thereof sustained certain injuries;"

"Third.—At the time of the occurrence of the injury there was a draft of freight cars attached to the engine which was in charge of the crew of which John M. Polk was a member. Some of these cars were cars bound from points within the State of Pennsylvania to other points within the State of Pennsylvania, and the others were cars loaded with various commodities, some of which were bound from points outside the State of Pennsylvania to points within the State of Pennsylvania, and others, of which were bound from points within the State of Pennsylvania to points outside of the State of Pennsylvania, and there was at least one car of this draft of freight cars which was passing through Pennsylvania, from a point in New York to a point in Illinois."

In accordance with the rule laid down in the decision of this Honorable Court, the defendant did offer testimony to show that the train attached to, and handled by, engine No. 832 was a train containing a number of interstate cars, and the Referee so found, as set forth in this Third additional finding of fact, *supra*.

That the finding of the Referee, "The defendant has not met the burden of proof that at the time of the occurrence of the injury, John M. Polk, was actually engaged in duties incident to interstate commerce," is wholly inconsistent with and contradictory to his other finding that he was at work as a brakeman on a train containing interstate cars in charge of the crew of which he was a member, to wit, the Fourth finding and Third additional finding, *supra*.

Your petitioner humbly submits that if the decedent Polk was at work on an interstate train, or in connection with the movement of an interstate train, the legal conclusion necessarily follows that he was engaged in interstate commerce.

42 That relying upon the agreement made at the hearing before the learned Referee, your petitioner deemed it unnecessary, upon the advice of Counsel, to offer testimony to prove either the agreed fact that Polk was at work on the train in question or the particular circumstances upon which the agreed fact was based.

That the defendant was at the time of the hearing before the Referee, and still is, able to prove the exact nature of the work that Polk was engaged in at the time of the accident, if given an opportunity to do so.

Therefore your petitioner respectfully prays that the judgment of this Honorable Court be reconsidered and the cause be remanded for a further hearing, in order that this appellant may have an opportunity to prove the circumstances upon which the agreed fact was based; or that a re-argument be ordered that the questions involved upon this record may be more clearly presented at bar.

And your petitioner will ever pray, etc.

GEORGE GOWEN PARRY.
GEORGE GOWEN PARRY.
Counsel for Petitioner Appellant.

43 STATE OF PENNSYLVANIA.
County of Philadelphia, ss:

Jay V. Hare, being duly sworn according to law, deposes and says that he is Assistant Secretary of Philadelphia and Reading Railway Company, the petitioner herein, and that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

J. V. HARE.

Sworn to and subscribed before me this 10th day of February,
 A. D. 1920.

[SEAL.]

K. KLINK,
Notary Public.

My Commission expires April 18, 1923.

I hereby certify that a copy of the foregoing petition has been served upon Counsel of record for the plaintiff above named.

GEORGE GOWEN PARRY,
Counsel for Petitioner Appellant.

44 In the Supreme Court of Pennsylvania, Eastern District,
 January Term, 1920.

No. 135.

Appeal from C. P. No. 5, Philadelphia.

MARIE E. POLK

v.

PHILADELPHIA & READING RAILWAY COMPANY, Appellant.

Filed February 2, 1920.

Per Curiam:

The defense set up by the appellant to the claim made by the appellee for compensation for the death of her husband is that at the time he received his injuries he was a brakeman in its employ in connection with its interstate commerce business. The referee found that he was an employee of the appellant on a freight train, in the Port Richmond yard, in Philadelphia, at the time of his injuries, which resulted in his death on August 29, 1917. There was no presumption as to the character of his employment. If it was in connection with interstate commerce, as is alleged by appellant, the burden was upon the latter to show that fact: *Hench v. Pennsylvania Railroad Company*, 246 Pa. 1; *Murray v. Pittsburgh, C. C. C. & St. L. Railroad Company*, 263 Pa. 398. The referee found as a fact that the appellant had failed to meet the burden of proof which

rested upon it. His distinct finding was "the defendant offered no testimony whatever to show what work John M. Polk was performing at the time he was injured."

Appeal dismissed and award affirmed.

Endorsement: No. 135, January Term, 1920, page 231. In the Supreme Court of Pa., January Term, 1920. Marie E. Polk vs. Philadelphia & Reading Railway Company, Appellant. Petition for Re-Argument. Feb. 16, 1920, re-argument refused: Per Curiam. Filed in Supreme Court Feb. 11, 1920, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

45 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920,

No. 135.

MARIE E. POLK

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

Petition for Writ of Error.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the Honorable the Other Justices of the said Court, and to the Honorable the Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company respectfully represents:

1. That on May 29, 1918, Marie E. Polk filed with the Workmen's Compensation Bureau of the State of Pennsylvania claim petition No. 5722, under the Workmen's Compensation Act of Pennsylvania, in which it was alleged that the claimant's husband, John M. Polk, died on August 29, 1917, as the result of an accident occurring in the course of his employment as a brakeman while coupling cars in the yard of the Philadelphia and Reading Railway Company at Clearfield Street, Philadelphia, Pa., and that at the time of the accident he was employed by Philadelphia and Reading Railway Company.

2. That on June 5, 1918, the defendant, your petition- herein, filed an answer to the said claim petition denying certain allegations of fact in the claim petition, and denying liability to pay compensation on the ground that both claimant's decedent and the defendant were engaged in interstate commerce at the time the former was injured.

3. That on June 11, 1918, a hearing was had before the Referee of the First Compensation District, who, on July 15th, 1918, made

an award against the defendant of \$5,595.98. From this award the defendant appealed to the Workmen's Compensation Board of Pennsylvania, and on October 3rd, 1918, the said Board affirmed the award of the Compensation Referee.

46 4. That on October 10th, 1918, your petitioner appealed from the decision of the Workmen's Compensation Board, affirming the award of the Referee, to the Court of Common Pleas No. 5 of Philadelphia County, as of September Term 1918, No. 1919, filing exceptions thereto to the effect that the said award of the Workmen's Compensation Board was in conflict with the provisions of the Act of Congress of April 22, 1908, commonly called "The Federal Employers' Liability Act," in violation of Article 1, Section 8 of the Constitution of the United States and in violation of the 14th Amendment to the Constitution of the United States.

5. That on August 14, 1919, the Court of Common Pleas No. 5 of Philadelphia County dismissed the appeal of the defendant and directed judgment to be entered in accordance with the award of the Referee and of the Workmen's Compensation Board, whereupon, on August 27, 1919, your petitioner herein, appealed to your Honorable Court as of January Term 1920, No. 135.

6. That in the formal assignments of error filed by your petitioner in your Honorable Court, it formally excepted to the opinion of the Court of Common Pleas No. 5 of Philadelphia County, dismissing the appeal of the defendant, and directing judgment to be entered upon the award of the Referee and the Workmen's Compensation Board, *inter alia* in the following particulars:

"2. The Court below erred in dismissing defendant's second exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

"2. The Compensation Board erred in failing to reach the conclusion that claimant's decedent and defendant were engaged in interstate commerce at the time decedent was injured."

4. The court below erred in dismissing defendant's fourth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

47 4. The Compensation Board erred in holding that the burden of proof was on the defendant to show that decedent was engaged in interstate commerce.

5. The Court below erred in dismissing defendant's fifth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

5. The Compensation Board erred in failing to hold that the burden of proof was on the claimant to show that the decedent came within the provisions of the Workmen's Compensation Act.

6. The Court below erred in dismissing defendant's ninth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

9. The award of the Compensation Board is in conflict with the provisions of the Act of Congress of April 22, 1908, and supplements thereto, known as the "Federal Employers' Liability Act," and in violation of Article I, Section 8 of the Constitution of the United States.

7. The Court below erred in dismissing defendant's tenth exception to the decision of the Workmen's Compensation Board, the said exception being as follows:

10. The award of the Compensation Board is in violation of the 14th Amendment to the Constitution of the United States in that it deprives this defendant of its property without due process of law."

7. That on February 2, 1920, the judgment of the Court of Common Pleas was affirmed by your Honorable Court on the ground that there was no presumption as to the character of the decedent's employment, and that if it was in connection with interstate commerce, the burden was upon the appellant to show that fact; that the Referee found as a fact that the appellant had failed to meet the burden of proof which rested upon it, his distinct finding being "the defendant offered no testimony whatever to show what work John M. Polk was performing at the time he was injured."

48 8. That on February 11, 1920, a petition for a reargument was filed with your Honorable Court by your petitioner herein, which petition was denied by your Honorable Court on February 16, 1920.

9. That the said judgment of your Honorable Court is the judgment of the highest court of the State of Pennsylvania, and is final and denies to your petitioner a right and privilege under the Act of Congress of February 22, 1908 aforesaid, and the right secured to it by the 14th Amendment to the Constitution of the United States.

Wherefore your petitioner prays that a writ of error may be allowed by your Honorable Court to bring before the Supreme Court of the United States for review and correction the errors complained of by the said final judgment of your Honorable Court and that your petitioner may have such other and further relief in the premises as may be just.

And your petition will ever pray, etc.

PHILADELPHIA AND READING
RAILWAY COMPANY.

By J. V. HARE.

Assistant Secretary.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Jay V. Hare, being duly sworn according to law deposes and says that he is Assistant Secretary of Philadelphia and Reading Railway Company, the petitioner above named, and that the facts set forth in the foregoing petition are true to the best of his knowledge, information and belief.

J. V. HARE,

Sworn to and subscribed before me this 19th day of February, A. D. 1920.

[SEAL.]

K. KLJNK,

Notary Public.

My Commission expires April 18, 1923.

Endorsement. Page 233.—In the Supreme Court of Pa., January Term, 1920. No. 135. Marie E. Polk vs. Philadelphia and Reading Railway Company, Appellant. Petition for Writ of Error. February 23, 1920. Writ of Error denied. Per Curiam. Filed in Supreme Court Feb. 29, 1920, Philadelphia. George Gowan
49 Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

50 In the Supreme Court of Pennsylvania, Eastern District,
January Term, 1920.

No. 135.

MARIE E. POLK

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the other Justices of the said Honorable Court, and to the Honorable Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company, Appellant herein, respectfully represents:

1. That on February 2, 1920, an opinion of this Court was filed affirming the judgment of the Court of Common Pleas No. 5 of Philadelphia County in favor of Marie E. Polk and against Philadelphia and Reading Railway Company, Appellant, in a cause of action in which the jurisdiction of the Workmen's Compensation tribunal was challenged on the ground that the claimant's decedent was engaged with the defendant in interstate commerce.

2. That the questions presented by the assignments of error in this cause, particularly those relating to the exclusive application of the

Federal Employers' Liability Act to cases where an employee of an interstate railroad is engaged in work incident to interstate commerce, are questions of broad general interest to railroad companies throughout the country; and your petitioner is advised by Counsel that it is desirable that the Supreme Court of the United States be asked to pass finally upon these questions in order that the management of the said companies be advised as to the proper disposition of similar cases arising in the future.

51 3. That the Act of Congress and the rules of the Supreme Court, in such cases made and provided, fix the time within which petitions for writs of certiorari be filed in the Supreme Court of the United States at three months, but your petitioner is prepared to perfect the record in this case and to file its petition for a writ of certiorari in the Supreme Court of the United States on or before the 5th day of April, 1920.

4. That your petitioner is advised that in order that the proceedings may remain in their present status pending the disposition of such a petition for a writ of certiorari, a special order of this Court is required to stay the issuing of the mandate.

Wherefore your petitioner prays that this Court enter an order directing the prothonotary of your Honorable Court to hold the mandate in this cause pending the filing of the aforesaid petition for a writ of certiorari in the Supreme Court of the United States until the 5th day of April, 1920, and that if said petition shall be filed in the Supreme Court of the United States on or before that day that the mandate be further held until the Supreme Court of the United States shall act upon the said petition for this writ of certiorari aforesaid.

And your petitioner will ever pray, etc.

PHILADELPHIA AND READING
RAILWAY COMPANY,
GEORGE GOWEN PARRY,
GEORGE GOWEN PARRY,

Counsel.

52

Order.

And now, to wit this — day of March, A. D. 1920, upon consideration of the foregoing petition and upon motion of George Gowen Parry, Esq., Counsel for Philadelphia and Reading Railway Company, Appellant, it is ordered that the mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920; and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Philadelphia and Reading Railway Company showing that a petition for a writ of certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be held for a further period thereafter, and shall not issue before final disposition

shall be made by the Supreme Court of the United States of the petition for the writ of certiorari aforesaid.

Chief Justice.

Endorsement: #135, page 240. In the Supreme Court of Pa., January Term, 1920. Marie E. Polk vs. Philadelphia and Reading Railway Company, Appellant. Petition to stay the mandate pending application to the Supreme Court of the United States for Writ of Certiorari. Mar. 8, 1920, Petition denied, Per Curiam. Filed in Supreme Court, Mar. 4, 1920, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

53 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1920.

No. 135.

MARIE E. POLK

vs.

PHILADELPHIA AND READING RAILWAY COMPANY, Appellant.

To the Honorable J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, and to the other Justices of the said Honorable Court, and to the Honorable Supreme Court of Pennsylvania:

The petition of Philadelphia and Reading Railway Company, Appellant herein, respectfully represents:

1. That on February 2, 1920, an opinion of this Court was filed affirming the judgment of the Court of Common Pleas No. 5 of Philadelphia County in favor of Marie E. Polk and against Philadelphia and Reading Railway Company, Appellant, in a cause of action in which the jurisdiction of the Workmen's Compensation tribunals was challenged on the ground that the claimant's decedent was engaged with the defendant in interstate commerce.

2. That the questions presented by the assignments of error in this cause, particularly those relating to the exclusive application of the Federal Employers' Liability Act to cases where an employee of an interstate railroad is engaged in work incident to interstate commerce, are questions of broad general interest to railroad companies throughout the country, and your petitioner is advised by Counsel that it is desirable that the Supreme Court of the United States be asked to pass finally upon these questions in order that the management of the said companies be advised as to the proper disposition of similar cases arising in the future.

3. That the Act of Congress and the rules of the Supreme Court in such cases made and provided, fix the time
54 within which petitions for writs of certiorari may be filed in the Supreme Court of the United States at three months.

It is further provided by Rule 37 of the Supreme Court of the United States that the party making application for a writ of certiorari shall, as a part thereof, furnish the court with a certified copy of the whole record, that thirty (30) printed copies of the petition for the writ of certiorari and brief in support thereof shall be filed and notice of the date of submission of the petition, together with a copy of petition and brief in support of the same, shall be served on the Counsel for the respondent at least two weeks before such date.

4. That your petitioner promptly applied to the Prothonotary of your Honorable Court for a certified copy of the record in this cause, but the said certified copy has not yet been received and your petitioner is advised by the Prothonotary that it has not been possible to prepare it owing to the pressure of work in his office, but your petition is prepared to perfect the record in this case and to file its petition for a writ of certiorari in the Supreme Court of the United States on the 5th day of April, 1920, if a certified copy of the record can be obtained before that date.

5. That your petitioner is advised that in order that the proceedings may remain in their present status pending the disposition of such a petition for a writ of certiorari, a special order of this Court if required to stay the issuing of the mandate.

Wherefore your petitioner prays that this Court enter an order directing the prothonotary of your Honorable Court to hold the mandate in this cause pending the filing of the aforesaid petition for a writ of certiorari in the Supreme Court of the United States until the 5th day of April, 1920, and that if said petition shall be filed in the Supreme Court of the United States on or before that day that the mandate be further held until the Supreme Court of the United States shall act upon the said petition for this writ of certiorari aforesaid.

55 And your petitioner will ever pray, etc.

PHILADELPHIA AND READING
RAILWAY CO.,
By GEORGE GOWEN PARRY,
GEORGE GOWEN PARRY,

Counsel.

56

Order.

And now, to wit this 9th day of March, A. D., 1920, upon consideration of the foregoing petition and upon motion of George Gowen Parry, Esq., Counsel for Philadelphia and Reading Railway Company, Appellant, it is ordered that the mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920; and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Philadelphia and Reading Railway Company showing that a petition for a writ of certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be

held for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of the petition for the writ of certiorari aforesaid.

J. HAY BROWN,
Chief Justice.

Endorsement: #135, page 248. In the Supreme Court of Pa., January Term, 1920. Marie E. Polk vs. Philadelphia and Reading Railway Company, Appellant. Petition to stay the mandate pending application to the Supreme Court of the United States for Writ of Certiorari. March 9, 1920, Petition granted. See Order inside. Filed in Supreme Court, Mar. 9, 1920, Philadelphia. George Gowen Parry, Attorney at Law, 415 Reading Terminal, Philadelphia.

57

January Term, 1920.

George Gowen Parry.

135.

MARIE E. POLK, Plaintiff,

VS.

PHILADELPHIA AND READING RAILWAY COMPANY, Defendant.

Appeal of Defendant.

No. 1919.

September Term, 1918, from the Judgment.

135.

Appeal from Court of Common Pleas, No. 5, of the County of Philadelphia.

Filed August 27, 1919.

Eo die, Certiorari exit.

Ret'ble first Monday, January, 1920.

September 5, 1919. Record returned & Filed.

January 5, 1920. Assignments of Error filed.

January 13, 1920. Argued.

February 2, 1920. Appeal dismissed and award affirmed. Per Curiam.

February 11, 1920. Petition for re-argument filed.

Feb. 16, 1920. Reargument refused. Per Curiam.

February 20, 1920. Petition for Writ of Error filed.

Feb. 23, 1920. Writ of error denied. Per Curiam.

March 4, 1920. Petition to stay the mandate pending application to the Supreme Court of the United States for writ of Certiorari filed.

Mar. 8, 1920. Petition denied. *Per Curiam*.

March 9, 1920. Petition to stay mandate pending application to Supreme Court of United States for writ of certiorari, filed.

And now, to wit, this 9th day of March, A. D. 1920, upon consideration of the foregoing petition and upon motion of Geo. Gowen Parry, Esq., Counsel for Phila. & Reading Rwy. Co., Appellant, it is ordered that the mandate in the above entitled case shall not issue but shall be stayed until April 5, 1920; and that if on or before that day there shall be filed with the Prothonotary of this Court an affidavit of Counsel for Phila. & Reading Rwy. Co. showing that a petition for a writ of certiorari has been filed by the said appellant in the Supreme Court of the United States that the mandate shall be held for a further period thereafter, and shall not issue before final disposition shall be made by the Supreme Court of the United States of the petition for the writ of certiorari aforesaid.

J. HAY BROWN, *J.*

58 I, J. Hay Brown, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Rudolph M. Schick was, at the time of signing the annexed attestation, and now is, Prothonotary pro tem, of the said Supreme Court of Pennsylvania, in and for the Eastern District, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 18th day of March, one thousand nine hundred and twenty.

J. HAY BROWN.

I, Rudolph M. Schick, Prothonotary pro tem, of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, that the Honorable J. Hay Brown, by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, Chief Justice of the Supreme Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Supreme Court of Pennsylvania, in and for the Eastern District, at Philadelphia, this 18th day of March, one thousand nine hundred and twenty.

[Seal of the Supreme Court of Pennsylvania, 1776.]

RUDOLPH M. SCHICK.

Prothonotary pro Tem.

59 STATE OF PENNSYLVANIA,
 Eastern District:

I, Rudolph M. Schick, Prothonotary pro tem. of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the record filed in the above entitled cause, so full and entire as appears of Record in said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 18th day of March, A. D. 1920.

[Seal of the Supreme Court of Pennsylvania, 1776.]

RUDOLPH M. SCHICK,
Prothonotary pro tem.

UNITED STATES OF AMERICA, *ss.*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

Being informed that there is now pending before you a suit in which Philadelphia & Reading Railway Company is appellant, and Marie E. Polk is appellee, which suit was removed into the said Supreme Court by virtue of an appeal from the Court of Common Pleas No. 5, of the County of Philadelphia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the sixth day of May, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,599. Supreme Court of the United States, No. 844, October Term, 1919. Philadelphia & Reading Railway Company vs. Marie E. Polk. Writ of Certiorari. Filed in Supreme Court May 18, 1920, Philadelphia.

In the Supreme Court of the United States, October Term, 1919.

No. 844.

PHILADELPHIA & READING RAILWAY COMPANY, Petitioner,

vs.

MARIE E. POLK, Respondent.

Stipulation.

The Writ of Certiorari in the above entitled case having been granted to the above entitled petitioner to review the judgment and decision of the Supreme Court of the State of Pennsylvania in the above case, in which Philadelphia & Reading Railway Company was Appellant and Marie E. Polk was Appellee:

Now it is therefore stipulated and agreed between counsel for the above named petitioner and counsel for the above named respondent that the Transcript of Record of the said Supreme Court of Pennsylvania in said cause now on file in the Supreme Court of the United

States be taken as a return to the said writ and that the Prothonotary of the Supreme Court of Pennsylvania forward a certified copy of this stipulation to the Clerk of the Supreme Court of the United States forthwith, as his return to the said Writ of Certiorari.

Done the 10th day of May, A. D. 1920.

GEORGE GOWEN PARRY,
Counsel for Above Petitioner.
FRANCIS M. McADAMS,
Counsel for Above Respondent.

Endorsement: #844. U. S. Supreme Ct., Oct. T., 1919.—Philadelphia & Reading Railway Company, Petitioner, vs. Marie E. Polk, Respondent.—Stipulation for Return of Writ of Certiorari.—Filed in Supreme Court May 18, 1920, Philadelphia.—George Gowen Parry Attorney at Law, 415 Reading Terminal, Philadelphia.

STATE OF PENNSYLVANIA,
Eastern District:

Supreme Court Office.

Philadelphia, May 18, 1920.

In obedience to the writ of certiorari hereto attached and returned herewith, I hereby certify that the foregoing contains a true copy of the stipulation of counsel in the case therein stated, as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed, the day and year above written.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

RUDOLPH M. SCHICK,
Prothonotary pro Tem.

[Endorsed:] 844/27,599. File No. 27,599. Supreme Court of the United States, No. 844, October Term, 1919. Philadelphia & Reading Railway Company vs. Marie E. Polk. Writ of Certiorari and Return.

[Endorsed:] File No. 27,599. Supreme Court U. S., October Term, 1919. Term No. 844. Philadelphia & Reading Ry. Co., Petitioner, vs. Marie E. Polk. Writ of certiorari and return. Filed May 18, 1920.